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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1967.

No. 626

DEANE HILL COUNTRY CLUB, INC.,
Petitioner,

vs.

CITY OF KNOXVILLE and GEORGE F. McCANLESS,
Attorney General of the State of Tennessee,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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OPINIONS BELOW.

The opinion of the District Court (p. A 1 of Petition) is reported at ... F. Supp. .... The opinion of the Circuit Court of Appeals for the Sixth Circuit (p. A 5 of Petition) is reported at ... F. (2d) ....

JURISDICTION.

The procedural jurisdiction of this Court to review the judgment of the Court of Appeals exists under 28 U. S. C. 1254 (1).

QUESTION PRESENTED.

Did the United States Circuit Court of Appeals for the Sixth Circuit err in affirming the action of the District Court of the Eastern District of Tennessee dismissing summarily plaintiff's suit to enjoin the enforcement of an ordinance of the City of Knoxville annexing plaintiff's property to the City?

Respondents insist that this question should be answered "no".

STATUTE AND ORDINANCE INVOLVED.

The pertinent provisions of the Tennessee municipal annexation statutes (Secs. 6-308 et seq., T. C. A.) and the City of Knoxville annexation ordinance in question (Ordinance No. 3050) are set forth in the Petition at pp. A 13 and A 16 respectively.

STATEMENT.

As aptly stated by the District Judge in this case, this case is a prolongation of litigation by plaintiff and others to invalidate the Knoxville ordinance annexing to the City property owned by plaintiff and adjacent property. Said ordinance was enacted in 1960 pursuant to Secs. 6-309 et seq., T. C. A., as they existed at that time. Promptly thereafter plaintiff and others filed suits in the appropriate trial court of Tennessee contesting the validity of said ordinance, charging among other things that the ordinance and the enabling statute violated the Fifth and Fourteenth Amendments. From an adverse judgment plaintiff and the other property owners appealed to the Tennessee Supreme Court, which affirmed in an opinion reported in 211 Tenn. 271, 364 S. W. (2d) 898. A petition for certiorari was denied by this Court. 372 U. S. 914, 9 L. Ed. (2d) 721.

In the interval between the Tennessee Supreme Court decision and this Court's denial of certiorari, the same parties who had applied for certiorari (including the chief stockholder of plaintiff corporation) on January 22, 1963, commenced a new action in the Chancery Court of Knox County seeking to enjoin the City of Knoxville from assessing or collecting taxes in the annexed area. The Supreme Court of Tennessee, upon direct application, ordered the Chancery suit superseded, and enjoined its further prosecution, on February 25, 1963. **State ex rel. v. City of Knoxville**, 211 Tenn. 430, 365 S. W. (2d) 433.

On October 27, 1965, plaintiff instituted the instant suit in the District Court, requesting the convening of a three-judge court pursuant to 28 U. S. C. 2281 and 28 U. S. C. 2284. Plaintiff claimed that annexation of its property onerated said property with a lien in partial security for the debts of the City incurred prior to the annexation,

and amounted to a taking of its property without just compensation in contravention of the Fifth Amendment; and that it was deprived by the ordinance of its property without due process of law, and denied thereby the equal protection of the law, as guaranteed by the Fourteenth Amendment.

Defendant City of Knoxville moved to dismiss the complaint because of lack of substantive federal jurisdiction. Defendant Attorney General answered, denying the allegations of the complaint to the extent that they assailed the validity of the annexation statute, and taking no position otherwise. The District Court sustained the motion to dismiss upon the ground that no federal question was presented (P. A 4 of Petition).

Plaintiff thereupon appealed to the Court of Appeals for the Sixth Circuit, alleging that its complaint made out a substantial question, and that under the authority of **Baker v. Carr**, 369 U. S. 186, 7 L. Ed. (2d) 663, and under 28 U. S. C. 1343 (3), the District Court erred in dismissing the complaint summarily and should have accorded plaintiff a hearing on the merits. The Circuit Court of Appeals affirmed the judgment of the District Court (P. A 13 of Petition).

ARGUMENT.

The absence of substantive federal jurisdiction to determine this cause upon the asserted merits is solidly established. No amount of confused reasoning or labored argument can justify the granting of the petition for certiorari herein sought. Petitioner has already had five full-dress hearings before competent courts upon the constitutional questions it seeks to pose, besides a refusal by this Court to entertain a petition for certiorari sought by it upon the essentially identical complaint in 1963. There is nothing in the history of this complaint which warrants a conclusion that plaintiff has not had his day in court.

On the other hand, the granting of the petition and the reversal of the lower courts' decision would veritably plunge urban governments generally into chaos. The steady migration of the population into urban areas in the past two decades is a matter of common knowledge. It may further be judicially noted that the need for governmental services and protection has compelled the expansion of municipal boundaries into hitherto suburban or rural areas. Many of the countless annexations which have occurred since the end of World War II would become subject to federal re-examination, and the civic rights and duties of millions of citizens would be thrown into a state of conjecture. Annexation by ordinance is now a familiar and sanctioned method of extending the territorial limits of a municipal corporation. 62 C. J. S., Corporations, Sec. 53, note 29.

The paramount authority relied upon by respondents, and by the courts below, was the case of **Hunter v. Pittsburgh**, 207 U. S. 161, 5 L. Ed. 151. Petitioner takes three distinct positions regarding that case: (1) it is not controlling under the facts of this case, (2) it is no longer the law, and (3) it is authority for the proposition that federal jurisdiction exists in this case.

The response to these inconsistent positions is rather obvious. First, inevitable factual differences between various annexation procedures do not affect the basic **Hunter** conclusion that a state's power to expand the boundaries of its political subdivisions is unrestricted by the federal Constitution. Second, **Hunter** has not been overruled and until this occurs it remains the law. Third, the fact that the court in **Hunter** assumed **procedural** jurisdiction to determine the validity of the alleged constitutional violation does not require the federal courts in subsequent cases to assume **substantive** jurisdiction and hear them on their merits. Where substantive jurisdiction is found lacking in one case, *stare decisis* dictates that it will be wanting in later cases within the same framework. The instant cause is unquestionably controlled by the **Hunter** principle that the expansion of municipal boundaries is a matter wholly within state power and discretion. The qualification placed upon that precept by **Gomillon v. Lightfoot**, 364 U. S. 339, 5 L. Ed. (2d) 110, clearly goes only to the use of that power in a discriminatory manner.

The Decision Below Is Clearly Correct.

Petitioner's claim of jurisdiction in the District Court rested solely upon 28 U. S. C. 1343 (3), and such claim is renewed here. That section accords jurisdiction to the district courts to hear "any civil action **authorized by law** to be commenced by any person. . . . To redress the deprivation . . . of any right, privilege or immunity secured by the Constitution of the United States . . ." (emphasis supplied).

The Court of Appeals held with eminent correctness that this section did not *ex proprio vigore* require the entertaining of any suit wherein there was urged any violation of federal constitutional rights. Such a suit, to be entertainable, must be authorized by some law. Peti-

tioner has not cited any law authorizing the bringing of a suit of this character in a federal court. It seems to assume that its allegations of deprivation of Fifth and Fourteenth Amendment rights sufficiently establish a federal case. Upon this reasoning a federal district court would be compelled to hear a suit for divorce if the complaining spouse averred that the other's conduct violated the federal constitution.

The Court of Appeals went beyond its duty in considering possible statutes which might be taken as authorizing the action. *Sua sponte* it examined 42 U. S. C. 1983 as a possible predicate for petitioner's suit, and found it to be wanting. Petitioner's reaction to this is one of umbrage when gratitude would seem required.

Petitioner laments the fact that the Court of Appeals chose to adhere to the **Hunter v. Pittsburgh** doctrine, although it concedes that the courts have regarded it as an impenetrable "iron curtain" to any question of legality of municipal annexation. It argues that **Hunter** does not preclude federal examination, because in **Hunter** (1) the claim of illegality rested upon an alleged impairment of contract, and (2) equal weight was not accorded to the vote of the inhabitants of the smaller city in the referendum upon the question of consolidation. An analysis of the **Hunter** opinion however shows that the Court dealt with the question broadly:

> "Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. . . . The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, **expand** or contract **the territorial area**, unite the whole or a part of it with another municipality, repeal

> the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or **without** the consent of the citizens, or **even against their protest.** In all these respects the State is supreme, and . . . may do as it will, unrestrained **by any provision of the Constitution of the United States** . . . the inhabitants and property owners . . . have no right by contract **or otherwise** in the unaltered or continued existence of the corporation or its powers . . ." (207 U. S. 179, 52 L. Ed. 159) (Emphasis supplied).

The above has very clearly not ceased to be the law, petitioner's suggestion to the contrary notwithstanding. **Hunter** has nowhere been overruled, and the cases cited by petitioner in no sense disestablish the proposition that expansion of municipal boundaries is exclusively a state matter when undertaken in a nondiscriminatory manner.

There Is No Conflict of Decision.

The Court of Appeals pointedly observed that its decision accorded squarely with its recent holding affirming the judgment of the Michigan District Court in **Detroit Edison Co. v. East China School District,** 247 F. Supp. 296 (aff'd. C. C. A. 6, ... F. (2d) ...). That case held that "any alteration of municipal boundaries is a matter within the discretion of the state and not confined by any rights secured by the federal constitution."

Likewise noted by the Court of Appeals was the decision in **Hammonds v. City of Corpus Christi,** 226 F. Supp. 456, aff'd. 343 F. (2d) 162 (C. C. A., 5), with this Court denying certiorari in 382 U. S. 837, 15 L. Ed. (2d) 80. Therein it was said "that the annexation of lands to a city or town is a purely political matter, entirely within the power of the legislature of the State to regulate."

Further, as hereinbefore pointed out, the selfsame questions raised by the petition were raised by the selfsame parties in the courts of Tennessee, with this Court declining to review the decision upon petition for certiorari. 372 U. S. 914, 9 L. Ed. (2d) 721. Petitioner has not cited and cannot cite a single federal case holding that a federal district court can intervene to thwart a nondiscriminatory annexation undertaking.

There is therefore no conflict of decision in the lower federal courts which would warrant this Court's taking jurisdiction to resolve.

There Is No Important Question of Federal Law.

What was said by the Court of Appeals in its opinion affirming the District Court manifestly negates any suggestion that there is any suggestion that there is any federal question whatsoever in the petition. No civil action of this character is authorized by any federal statute. Even if the contrary were true, petitioner alleges nothing making out any deprivation of a federally guaranteed right. No one has a constitutional right to be either within or without a municipality. It is not shown, or even averred, that petitioner did not have a full and fair hearing in the State courts upon its annexation to the City of Knoxville. It is not demonstrated that the annexation provisions of Tennessee law operate against petitioner any differently from the way in which they affect others similarly situated.

Tennessee's political process has provided competently for its municipalities to annex adjacent territory by ordinance enacted upon proper notice, subject to judicial review as to reasonableness. This is very clearly within Tennessee's power, unrestrained by the federal Constitution when exercised in a nondiscriminatory manner. There is therefore nothing for this Court to review

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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.....

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Certificate.

I, Milton P. Rice, one of the attorneys for respondents in this cause, do hereby certify that I have caused a copy of the foregoing brief in opposition to the petition for certiorari herein filed to be served upon the Honorable William E. Badgett, attorney for petitioner herein, by mailing a copy thereof to him at his last known address, United States postage prepaid.

.....

Milton P. Rice.